

REMARKS

As noted above, this amendment is filed response to the Office Action mailed on March 8, 2004. This amendment is submitted before June 8, 2004, thus no extension of time or additional fee is required.

I. STATUS OF THE CLAIMS

Claims 7-21, 27-34 and 38-49 are pending in the case. By this amendment, claims 39, 48, and 49 have been amended, claims 41, and 45-47 have been canceled and new claims 50-64 have been added. Thus, claim 7-21, 27-34 and 38-40, 42-44, and 48-64 are now pending and at issue in this case. Entry of this amendment is respectfully requested and required.

Applicants enclose a check in the amount of \$298 to cover the fees for 2 independent claims in excess of the 3 independent claims originally filed, and 7 additional claims in excess of the 38 claims originally filed and amended.

II. REJECTIONS UNDER 35 U.S.C. §103(a)

The present invention discloses breathable fabrics and articles adapted for use between parts of the body of a human or animal and a compressing object. The problem addressed by the invention is the build-up of moist air in the region where the article is in close proximity to the wearer - a consequence of evaporation from the wearer's skin and/or incontinence. In particular, when the article is compressed by a compressing object it is configured such that it retains the ability to transport moist air away from the wearer.

In particular, the present invention provides a plurality of flexible dome projections formed between a first and second surface of the fabric. The present invention further provides a first cavity formed adjacent to each of the plurality of the

dome projections and a plurality of spacers positioned along the second surface to form a second cavity adjacent to each of the plurality of the dome projections. In use, the first surface of the fabric is arranged adjacent to the body, and the second surface of the fabric is arranged adjacent to the compressing object to suspend the flexible dome projections therebetween. As moisture, heat, and pressure from the body accumulates within the first cavity during activity, a pumping action provided by the flexure of the dome projections forces the fluid (e.g., moisture, and air) from the first cavity to the second cavity. The spacers cooperate with the compressing object to insure flexure of the dome projections even when the fabric is firmly in contact with the compressing object.

None of the cited references suggests or discloses the features or functions provided by the present invention. For example, the inventor's prior patent publication No. WO 91/1259 (Middleton) discloses a breathable fabric including a dome 8 formed external to the surface of the first layer 1 (see FIGS. 2a and 3b), but does not disclose or even suggest, a dome formed between the first and second surfaces of the layer. Moreover, as previously discussed in the response filed on September 16, 2003, Middleton fails to disclose or suggest a spacer of any kind, and certainly not a spacer adapted to define a second cavity. Thus, the fabric disclosed by Middleton experiences poor fluid flow when firmly in contact with a rigid surface or compressing object.

Nold (U.S. Patent No. 5,153,956) adds nothing to teachings of the Middleton. Nold simply discloses a "cushioning layer" adapted for use with an individual who is confined to a bed for a prolonged period of time. Nold does not disclose or suggest a dome projection of any kind, much less a dome projection formed between the first

and second surfaces of the base. Moreover, the Office action mischaracterizes Nold as teaching a plurality of spacers on the underside of the base, when in fact Nold actually teaches the away from forming spacers, ribs, etc. on the outer of the base. Nold teaches that:

[t]he base 10 is provided on its underside 14 with a plurality of recesses 15 each communicating with a through hole 16 which pierces base 10. Each through hole 16 is adjacent an upstanding protrusion 11, the arrangement being such that each of four upstanding protrusions are spaced about the periphery of through hole 16. Col. 4, lines 42-48 (emphasis added).

In other words, Nold teaches **removing** material from the underside of the base to form the plurality of recesses, but does not teach, at any level, **adding** material to the top side to form a plurality of spacers or ribs. In fact, Nold does not disclose or even suggest that adding material to the underside of the base would have any effect on the fluid flow through the hole much less when the base was firmly in contact with a rigid surface or compressing object.

Thus, because there is no suggestion or motivation within either of the references to add material to form a plurality of spacers on the top side, and because neither Middleton nor Nold teach or suggest all of the claim limitations set forth in the claims at issue, the pending action does not set forth a *prima facie* case of obviousness¹. In particular, because Nold teaches away from adding material to

¹ To establish a *prima facie* case of obviousness, three basic criteria must be met:

- (a) First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.
- (b) Second, there must be a reasonable expectation of success.
- (c) Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

the underside of the base there is simply no suggestion or motivation to attempt to make the combination set forth in the pending Office Action. Further, neither reference teaches or suggests a plurality of flexible dome projections formed between a first and second surface of the fabric, or a first cavity and a plurality of spacers positioned along the second surface to form a second cavity. For all of these reasons, applicant respectfully asserts that the pending claims are not rendered obvious by Middleton alone or in combination with Nold.

III. CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance.

If there are any additional fees or refunds required, the Commissioner is directed to charge or debit Deposit Account No. 13-2855.

Applicant respectfully requests that the Examiner pass this application to issue.

Respectfully submitted,

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